



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JOHN HERBERT SHRUM  
CR-08-0312-PR**

**PARTIES AND COUNSEL:**

*Petitioner:* The State of Arizona is represented by Deputy Maricopa County Attorney Gerald R. Grant.

*Respondent:* John Herbert Shrum is represented by Deputy Maricopa County Legal Advocate Thomas J. Dennis.

**FACTS:**

Shrum pled guilty to two amended counts of attempted sexual conduct with a minor, class 3 felonies and dangerous crimes against child in the second degree. The first crime occurred between May 1, 2002 and February 1, 2003, and the second crime occurred between January 1, 1999 and May 1, 2002. The plea agreement provided that Shrum would receive lifetime probation for the second count; there was no stipulated sentence for the first count. On July 18, 2003, the trial court sentenced Shrum to eight years imprisonment for the first count and lifetime probation for the second count.

Shrum filed a timely notice of post-conviction relief (“PCR”) but later moved to dismiss because he no longer wanted to contest the judgment of guilt or sentence. On September 24, 2003, the trial court granted the motion to dismiss.

Subsequently, Shrum filed the instant PCR based on *State v. Gonzalez*, 216 Ariz. 11, 162 P.3d 650 (App. 2007). In *Gonzalez*, the court of appeals held that A.R.S. § 13-604.01(I), the statute under which Gonzalez was convicted and sentenced, did not include attempted sexual conduct with a minor under age 12 based on the plain language of the statute.<sup>1</sup> Because Gonzalez’s victim was under age 12, the court concluded that Gonzalez was sentenced illegally.

In his PCR, Shrum claimed he also was illegally sentenced under A.R.S. § 13-604.01 because his victim was under the age of 12, and he asked to be resentenced under A.R.S. §§ 13-701 and -702. The trial court granted the requested relief, finding that the *Gonzalez* decision was a significant change in the law that applied to Shrum’s case. See Rules 32.1(g) and 32.2(b), Ariz. R. Crim. P.<sup>2</sup> The State sought review in the court of appeals.

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<sup>1</sup> The statute has since been amended to include children under age 12.

<sup>2</sup> Rule 32.1(g) provides an exception to the usual waiver rule for “a significant change in the law that if determined to apply to defendant’s case would probably overturn the defendant’s conviction or sentence.”

In an order filed October 23, 2008, the court of appeals summarily denied review of the trial court's grant of post-conviction relief and lifted the stay it had previously granted in the matter. On November 3, 2008, the State filed its petition for review in this Court claiming (1) that Shrum had waived his *Gonzalez* argument by not raising it at sentencing or in his first PCR, and (2) that *Gonzalez* was wrongly decided. On November 25, 2008, Shrum filed his response and motion to expedite consideration of petition for review.

This Court granted review of the State's first issue only, which is repeated below verbatim.

**ISSUE:**

Shrum dismissed his first Rule 32 proceeding because he did not wish to contest the judgment of guilt or sentence imposed. When he filed a successive petition claiming he received an unlawful sentence, did the trial court err in finding the claim had not been waived?

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